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इस भाग में भिन्न पृष्ठ संलग्न वो जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate Paging is given to this Part in order that It may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)

PART II—Section 3—Sub-section (iii)

(संघ राज्य लेन्ड प्रशासनों को छोड़कर) केंद्रीय प्रधिकारियों द्वारा आरी किए गए आदेश और प्रधिकूलनाएं

Orders and Notifications issued by Central Authorities (other than
Administrations of Union Territories)

भारत विवराचन आयोग

आदेश

नई दिल्ली, 7 अप्रैल, 1983

आ० आ० 46.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट पञ्चम ब्रांगल विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन क्षेत्र में हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अध्यार्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्धीन बनाए गए नियमों द्वारा अपेक्षित समय के भीतर और रीति में उसके भागणी के स्तम्भ (5) में यथा अपेक्षित रूप में अपने निर्वाचन व्ययों का लेखा। दाखिल करने में असफल रहा है;

और, उक्त अध्यार्थियों ने सम्यक सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कारण अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अध्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान ही गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या त्यायोचित नहीं है,

और अब, निर्वाचन आयोग उक्त अधिनियम के पैरा 10-क के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों की संमद के किसी भी सदन के या किसी गज्य की विधान सभा अथवा विधान परिषद् के महस्य चुने जाने और होने के लिए इस आदेश की तारीख से तीन वर्ष के कालावधि के लिए निर्गति घोषित करता है।

सारणी

सं०	निवाचन की विधिशिष्टिया	विधान सभा निवाचन क्षेत्र की सं० और नाम	निवाचन लड़ने वाले अभ्यर्थी का नाम और पता	निरहृता का कारण
1	2	3	4	5
1.	परिचम बगाल के लिए विधान सभा का साधारण निवाचन, 1982	228-दान्तन	श्री पी० ए० एल० सोरन, ग्रा० छोटो बसारा, डा० परिहाटी, जिला मिदनापुर।	कोई भी लेखा दाखिल नहीं किया है।
2.	—वही—	—वही—	श्री भीम दुहु, ग्राम-पो० कियोट खालिसा, जिला मिदनापुर।	—वही—
3.	—वही—	234-मानबाजार (अ० बा०)	श्री महादेव राय, ग्राम-पो० मानबाजार, जिला पुरुलिया।	—वही—
4.	—वही—	241-रघनाथपुर (अ० जा०)	श्री फानी भूषन मंडल ग्राम-पो० इलु, जिला पुरुलिया।	—वही—
5.	—वही—	243-हुरा	श्री कर्णानी पाढ़ा पत्ती, ग्राम-पो० बिसपुरिया, जिला पुरुलिया।	—वही—
6.	—वही—	127-सागर	श्री एन० आर० दास, ग्राम ईसबरीपुर, डा० मुरीगंगा, जिला 24-परगना।	—वही—
7.	—वही—	242-काशीपुर (अ० ज० जा०)	श्री रामपाढ़ा माझी, ग्राम मोईसाराढ़ीह, डा० बेको, जिला पुरुलिया।	—वही—
8.	—वही—	236-आरसा	श्री जी० एस० बाबू, ग्राम डा० पटोहेसल जिला पुरुलिया।	—वही—
9.	—वही—	237-झालदा	श्री बी० एन० काईबरता ग्राम पो० झालदा, जिला पुरुलिया।	—वही—
10.	—वही—	237-झालदा	श्री सुरेन्द्र कुमार, ग्राम दरगु, पो० चेत्तिया, जिला पुरुलिया।	—वही—
11.	—वही—	80-रामधाट पूर्व (अ० जा०)	श्री कृष्णन्दु बिसवास, ग्राम तेजपुर, डा० बोईन्दा, जिला नादिया।	—वही—
12.	—वही—	202-तामलुक	श्री मिलन कर्णिला, ग्राम जूसवामदूर, डा० नईकुरी, जिला मिदनापुर।	—वही—
13.	—वही—	119-डायमंड हरखर	श्री गोपाल बर्मन, ग्राम खोरदा, डा० कमर-पोल जिला 24-परगना।	—वही—
14.	—वही—	144-बड़ा बाजार	श्री शेख अब्दुल कुदस, 11-कालूसोला स्ट्रीट, लेखा रीति से कलकत्ता-73	दाखिल नहीं किया।
15.	—वही—	129-नई हटी	श्री सुख परंजन इंदु 45/1 बाजारधाट रोड, डा० नईहटी, जिला 24-परगना।	—वही—
16.	—वही—	—वही—	श्री रणजीत भट्टाचार्य ससरीताला रोड, डा० भट्टाचारा, जिला 24-परगना	—वही—
17.	—वही—	205-सुताहाटा (अ० जा०)	श्री शिवा नाथ दास, ग्राम काशीपुर डा० गोलपचक, जिला मिदनापुर।	कोई भी लेखा दाखिल नहीं किया है।

1	2	3	4	5
18.	पश्चिम बंगाल के लिए विधान सभा का साधारण निर्वाचन 1982	209-खजूरी (आ० जा०)	श्री लाल बिहारी दास, ग्राम डा० रामचक, कोई भी लेखा दाखिल जिला मिदनापुर ।	नहीं किया है ।
19.	—वही—	215-पतसपुर	श्री चितरंजन बासु, ग्राम बराजलालपुर, डा० —वही— अमरस्थी, जिला मिदनापुर ।	
20.	—वही—	216-साबंग	श्री साल मोहन बास्की, देखोग, डा० भद्रन —वही— मोहन चक, जिला मिदनापुर ।	
21.	—वही—	223-मिदनापुर	श्री खगेन सिंधा देब, ग्राम सिरसी, डा० चन्द्रा, —वही— जिला मिदनापुर ।	
22.	—वही—	225-खडगपुर बेहात	श्री एल० के० सेन, सकूल बाजर, डा० जिला —वही— मिदनापुर ।	
23.	—वही—	230-गोपीबलवपुर	श्री जुगल किशोर जाना, ग्राम दक्षिण दारिया, —वही— डा० अन्धारी मूबन्द्र, जिला मिदनापुर ।	
24.	—वही—	220-गढ़बेटा पूर्व	श्री मदन सोरन, ग्राम कशुदियासोल, डा० चन्द्रबिला, जिला मिदनापुर ।	—वही—
25.	—वही—	—वही—	श्री अरबिन्दा धोरा, ग्राम सलदांगरा, डा० आगरा, जिला मिदनापुर ।	—वही—
26.	—वही—	248-छतना	श्री प्रभात सेनगुप्ता, ग्राम लक्ष्मीसोल डा० वैदलक्ष्मीसोल जिला बांकुरा ।	—वही—
27.	—वही—	245-रायपुर (आ० जा० जा०)	श्री चितरंजन भंडी, ग्राम रघुनाथपुर डा० दाहीजुरी, जिला मिदनापुर	—वही—
28.	—वही—	258-बाराबानी	श्री निमाई बूरी, ग्राम डा० माजायाराम जिला बरदबान ।	—वही—
29.	—वही—	—वही—	श्रीमति सरस्वती देवी, फ्लाटर नं० 11/3 झी, —वही— स्ट्रोट नं० 33, डा० चितारंजन, जिला बरदबान ।	
30.	—वही—	259-हीरापुर	श्री सैयदसमसाद, रहमत नगर, डा० बरनपुर, जिला बरदबान ।	—वही—
31.	—वही—	260-आसनसोल	श्री समरेन्द्र चक्रबर्ती, महसिला कालोमी, डा० आसनसोल, जिला बरदबान ।	—वही—
32.	—वही—	260-आसमसोल	श्री सानी गोपाल बूरी, ग्राम काशीनाथपुर, डा० रती-बती जिला बरदबान ।	—वही—
33.	—वही—	261-रामीगंज	श्री हरे कृष्णा गोस्वामी, ग्राम डा० बलवपुर जिला बरदबान ।	—वही—
34.	—वही—	—वही—	श्री लक्ष्मण रुद्धिवास, ग्राम चूर्हा, डा० काली-पहारी, जिला बरदबान ।	—वही—
35.	—वही—	—वही—	श्री कमलेश सिंह, जे० के० नगर बाजार, डा० जे० के० नगर, जिला बरदबान ।	—वही—
36.	—वही—	262-जमुरिया	श्री नेमाई बूरी ग्रा. पो० परिहरपुर, जिला बरदबान ।	—वही—
37.	—वही—	264-दुर्गापुर	श्री देवीवास मुख्यर्जी 1/16 न्यूटन एवन्ड् डा० दुर्गापुर-5, जिला बरदबान ।	—वही—
38.	—वही—	—वही—	श्री मुकुल सामान्ता, ग्राम साक्षर, डा० धावानी, जिला बरदबान ।	—वही—

1	2	3	4	5
39.	पश्चिम बंगाल के लिए विधान सभा साधारण निर्वाचन 1982	264-दुर्गापुर	श्री कल्याण गोस्वामी, ग्राम-पो० सोरपी, जिला बरदवान।	कोई भी लेखा दाखिल नहीं किया है।
40.	—वही—	265-दुर्गापुर-II	श्री रथदुर्घु, ग्राम पलसदीहा कालोनी, डा० दुर्गापुर-3, जिला बरदवान।	—वही—
41.	—वही—	268-भातर	श्री बी० सी० चैटजी, ग्राम-पो० अरुआर 'महाराष्ट्राताल', जिला बरदवान।	—वही—
42.	—वही—	280-कटवा	श्री सभासिंश गंगोली, पंचानन ताला, कटवा, डा० कटवा, जिला बरदवान।	—वही—

[सं० 76/प० बंगाल वि० सं०/83]

आदेश से,

धर्मचीर, अबर सचिव

ELECTION COMMISSION OF INDIA
ORDER

New Delhi, the 7th April, 1983

O.N. 46.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the West Bengal Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses within the time and in the manner, as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

TABLE

S.No.	Particulars of election	S.No. and Name of Constituency	Name and address of candidate	Reasons of disqualification
1	2	3	4	5
1.	General Election to West Bengal Legislative Assembly, 1982	228-Danton	Shri P.L. Soren Village Chhoto Bansara, P.O. Parihati, Distt. Midnapore	Account not lodged
2.	-do-	-do-	Shri Bhim Tudu Village & P.O. Keot Khalisa, Distt. Midnapore	-do-
3.	-do-	234—Manbazar	Shri Mahadeb Roy Village & P.O. Manbazar Distt. Purulia.	-do-
4.	-do-	24-Raghunathpur (SC)	Shri Phani Bhusan Mondal, Village & P.O. Iloo, Distt. Purulia	-do-
5.	-do-	243—Hura	Shri Karali Pada Pati Village & P.O. Bispuria, Distt. Purulia.	-do-
6.	-do-	127—Sagar	Shri N.R. Das Village Iswaripur, P.O. Muriganga, Distt. 24-Parganas.	-do-
7.	-do-	242-Kashipur (ST)	Shri Rampada Majhi Village Moyasaradih, P.O. Beko, Distt. Purulia	-do-

1	2	3	4	5
8.	General Elections to West Bengal Legislative Assembly, 1982	236—Arsa	Sh. G.S. Babu Village & P.O. Patahesal Distt. Purulia.	Account not lodged
9.	do.	137—Jhalda	Sh. B.N. Kaibarta Village & P.O. Jhalda, Distt. Purulia	do.
10.	do.	237—Jhalda	Shri Surendra Kumar Village Durgu, P.O. Chekia, Distt. Purulia.	do.
11.	do.	80-Ranaghat East (SC)	Shri Krishnendu Biswas, Village Tejpur, P.O. Boincha, Distt. Nadia.	do.
12.	do.	202-Tamluk	Sh. Milan Kulia village, Jasadambur, P.O. Naikuri, distt. Midnapore.	do.
13.	do.	119—Diamond	Sh. Gopal Burman Village Khorda, P.O. Kamarpole, Distt. 24-Parganas	do.
14.	do.	144-Bara Bazar	Sh. Sheikh Abdul Qudus 11-Collutola Street, Calcutta-73.	Account not lodged in the manner
15.	do.	129—Naihati	Sn. Sukharanjan Indu, 45/1, Bazarghat Road, P.O. Naihati, 24-Paraganas.	do-
16.	do.	do.	Sh. Ranjit Bhattacharya Sasthitala Road, P.O. Bhatpara, Distt. 24-Parganas.	do.
17.	do.	205-Sutahata (SC)	Sh. Shiba Nath Das Village Kashipur, P.O. Golapachak Distt. Midnapore	Account not lodged
18.	do.	209-Khajuri (SC)	Sh. Lal Behari Das Village P.O. Ramchak, Distt. Midnapore	do.
19.	do.	215-Pataspur	Sh. Cnittaranjan Basu Village Barajalalpur, P.O. Amarshi, Distt. Midnapore.	do.
20.	do.	216-Sabang	Sh. Lal Mohan Baskey Village Debhog, P.O. Madan Mohan Chak, Distt. Midnapore.	do.
21.	do.	223-Midnapore	Sh. Khagon Singha Deb, Vilage Sirshi P.O. Chandra, Distt. Minapore..	do.
22.	do.	225-Kharagpur Rural	Sh. L.K. Sen, School Bazar, P.O. Midnapore. Distt. Midnapore.	Account not lodged
23.	do.	230-Gopiballavpur	Sh. Jugul Kishore Jana Village, Dakshin Daria, P.O. Andhari Moubhandar, Distt. Nidnapore.	do.
24.	do.	220-Garhbeta East	Sh. Madan Soren Village Kashudiasole P.O. Chandabilla, Distt. Midnapore.	do.
25.	do.	do.	Sh. Arabinda Ghora Village Saladanga, P.O. Agra Distt. Midnapore.	do.

1	2	3	4	5
26.	General Elections to west Bengal Legislative Assembly, 1982	248-Chhatna	Sh. Provat Sengupta Village Lakshmisole, P.O. Baidyalakshmisole Distt. Bankura.	Account not lodged
27.	do.	245-Raipur (ST)	Sh. Chittaranjan Mandi Village Raghunathpur P.O. Dahijuri, Distt. Midnapore.	so.
28.	do.	258-Barabani	Sh. Nimai Bouri Village & P.O. Najiaram Distt. Burdwan.	do.
29.	do.	do.	Smt. Saraswati Devi Qr. No. 11/3/D, Street, No. 33, P.O. Chittaranjan Distt. Burdwan.	do.
30.	do.	259-Hirapur	Sh. Sayed Samsad Rahmat Nagar, P.O. Burnpur Distt. Burdwan.	do.
31.	do.	260-Asansol	Sh. Samarendra Chakraborty, Mahisila Colony, P.O. Asansol, Distt. Burdwan.	do.
32.	do.	do.	Shri Nani Gopal Bouri Village Kashinathpur P.O. Rati-Bati, Distt. Burdwan.	do.
33.	do.	261-Raniganj	Sh. Hare Krishna Goswami, Village & P.O. Ballavpur, Distt. Burdwan	do.
34.	do.	do.	Sh. Laxman Ruidas, Village Chapui, P.O. Kalipahari, Distt. Burdwan	do.
35.	do.	do.	Sh. Kamlesh Singh J.K. Nagar Bazar, P.O. J.K. Nagar, Distt. Burdwan	do.
36.	do.	262-Jamuria	Sh. Nemai Bouri V. & P.O. Pariarpur Distt. Burdwan	do.
37.	do.	264-Durgapur-I	Sh. Debi das Mukherjee 1/16, Bewton Avenue P.O. Durgapur-5 Distt. Burdwan	do.
38.	do.	do.	Sh. Mukul Samanta Village, Naclar, P.O. Dhabani Distt. Burdwan	do.
39.	do.	do.	Sh. Kalyan Goswami V & P.O. Sorpi Distt. Burdwan.	do.
40.	do.	265-Durgapur-II	Sh. Rath Tudu Village Palasihha Colony, P.O. Durgapur-3 Distt. Burdwan	do.
41.	do.	268-Bhatar	S. B.C. Chatterjee Village & P.O. Aruar 'Manarudratala Distt. Burdwan.	do.
42.	do.	280-Katura	S. Subnashis Ganguly Panchanantala Katwa, P.O. Katwa, Distt. Burdwan.	do.

[No. 76/ W.B./82]

By Order

DHARAMVIR, Under Secy.

नई दिल्ली, 12 मई, 1983

मा० अ० 47.—लोक प्रतिनिधित्व अधिनियम 1950 (1950 का 43) की धारा 13 की उपधारा (1) द्वारा प्रवत्त शक्तियों का प्रयोग करते हुए, भारत निर्वाचन आयोग, महाराष्ट्र सरकार के परामर्श से श्री के.जी. परांजपे के स्थान पर श्री बी.के. हाल्के, आई.ए.एस., विशेष सचिव, महाराष्ट्र सरकार, को उनके कार्य भार सम्भालने का तारीख से अगले आदेशों तक महाराष्ट्र राज्य के मुख्य निर्वाचन अधिकारी के रूप में नामनिर्देशित करता है।

[सं० 154/महा०/83]

आदेश से,
के० गणेशन सचिव

New Delhi, the 12th May, 1983

O.N. 47.—In exercise of the powers conferred by sub-section (1) of section 13A of the Representation of the People Act, 1950 (43 of 1950), the Election Commission of India, in consultation with the Government of Maharashtra hereby nominates Shri B. K. Halve, IAS, Special Secretary to the Government of Maharashtra, Food & Civil Supplies Department as the Chief Electoral Officer for the State of Maharashtra with effect from the date he take over charge and until further orders.

[No. 154/MT/83]
By order,
K. GANESAN, Secy.

नई दिल्ली, 16 मई, 1983

मा० अ० 48.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग 1980 को निर्वाचन अर्जी सं० 13 में इलाहाबाद उच्च न्यायालय के तारीख 15-4-1983 का निर्णय एतद्वारा प्रकाशित करता है।

[सं० 82/उ०प्र०/13/80/ (इला०)]
आदेश से,
ओ०ना० नगर, अवर सचिव

New Delhi, the 16th May, 1983

O.N. 48—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the judgement dated 15th April, 1983 of the High Court of Judicature at Allahabad in Election Petition No. 13 of 1980.

[No. 82/UP/13/80(Alld)]
By order,
O. N. NAGAR, Under Secy.

IN THE HIGH COURT OF JUDICATURE AT
ALLAHABAD.

Civil Side.

Original Jurisdiction

Dated Allahabad the 15th April, 1983.

PRESENT :

The Hon'ble P. N. Harkauli — Judge
Election Petition No. 13 of 1980.

Mahant Yadav Versus. Sri Chandra Shekhar
BY THE COURT

Hon'ble P. N. Harkauli, J.

Shri Chandra Shekhar, respondent, was declared elected to Parliament from Parliamentary Constituency No. 43 (Ballia) in the elections held in December, 1979—January, 1980. By this petition under Section 80 of the Representation of the People Act (hereinafter referred to as the Act) the petitioner Mahant Yadav, who claims to be a voter in that constituency, has challenged the election of the respondent. He has prayed that the election of the respondent should be declared void and the respondent should be disqualified from seeking election for a period of six years in view of certain corrupt practices alleged to have been committed by him.

The petition is contested by the respondent, who has pleaded, inter alia, that the petitioner was not a voter in that constituency and so he had no locus standi to maintain this election petition, that the affidavit filed in support of the petition is defective, being not in accordance with law, and so the petition was liable to be rejected, and that, in any case, the petitioner had failed to supply true copies of the petition as required by Section 81(3) of the Act and, therefore, in view of Section 86 (1) of the Act the petition was liable to be dismissed.

These pleas of the respondent give rise to the following three issues, which were tried as preliminary issues :—

Issue No. 31 :

Whether the petition is liable to be dismissed for non-compliance with the provisions of Section 81 (3) of the Representation of the People Act 1951 ?

Issue No. 4 : Whether the petitioner has locus standi to file this election petition ?

Issue No. 5 : Whether the affidavit filed in support of the petition is defective as alleged in para 44 of the written statement ? If so, is effect ?

FINDINGS

Issue No. 4 : In order to prove that he was a voter in this very parliamentary constituency and therefore entitled to maintain this petition, the petitioner filed a certified copy of the electoral roll (Ex. P-1). It shows that in the electoral roll relating to village Baheri, Tahsil Bansdih, district Ballia, which admittedly lies in this constituency, the name of Mahant, son of Radha Kishan, male, aged 43 years is entered at serial No. 274. The petitioner also entered the witness-box as P. W. 1 and stated that he was the only person by name of Mahant Yadav, son of Radha Kishan Yadav in village Baheri, that his name was entered in the electoral roll at Serial No. 274, that he was a voter in the Ballia parliamentary constituency and that he had actually voted in this election. He further categorically stated that there is no other person named Mahant, son of Radha Kishan in his village. Absolutely nothing has been brought out in his cross-examination which could cast any doubt upon his testimony, which is corroborated by the entry in Ex. P-1. Nor has the respondent produced any witness to rebut this evidence of the petitioner. He did not even enter the witness-box himself. In the circumstances there is no reason at all to doubt the petitioner's evidence on this point. It was pointed out that the petitioner is named Mahant Yadav, while in the electoral roll the name entered is only Mahant and that the petitioner gave his age as 50 years while in Ext. P-1 the age of Mahant is noted 43 years. It is common knowledge that quite often full names of the voters are not noted by the election staff when they go out for checking and so are not printed in the electoral rolls and that the ages are often given by village people approximately. In the absence of any evidence in rebuttal the sworn testimony of the petitioner, which is substantially corroborated by the electoral roll, cannot be discarded on account of such minor inaccuracies.

Before concluding the discussion on this issue, I may mention that the respondent also filed a certified copy of the electoral roll (Ex. R-4) which shows that at serial No. 274 the name of one Shiva Mani is mentioned. But this is of the year 1980. In the election in question here, nominations closed on 12-12-79 and polling was held on 6-1-80. It is therefore, obvious that Ex. R-4 is a copy of the electoral roll as it stood after revision held subsequent to the election in question. Ex. R-4 therefore can offer no rebuttal to the evidence adduced by the petitioner.

Accordingly, I hold that the petitioner was a voter in this constituency and he has locus standi to maintain this petition. Issue No. 4 is decided in favour of the petitioner.

Issue No. 5 : The learned counsel for the respondent conceded that even if the affidavit was defective, the defect can be allowed to be cured subsequently and it cannot prove fatal to the petitioner, and he therefore did not press this issue. No finding therefore need be given on it.

Issue No. 3 : The main plea of the respondent is the subject of this issue. The respondent's contention is that the copies of the petition supplied by the petitioner (Ex. R-1 and R-2) are not true copies of the petition and the failure of the petitioner to supply true copies of the petition, which he was obliged to supply under Section 81 (3) of the Act, must, in view of Section 86 (1) of the Act, entail dismissal of the petition.

Two copies of the petition supplied by the petitioner were sent to the respondent, one was sent by registered post and the other through a process-server. The former was served on the respondent. It is Ex. R-1. The latter which was sent through process server, was returned as unserved. It is Ex. R-2. When the petitioner entered the witness-box as P.W. 1 both these copies were put to him and he admitted that they bore his signatures and that he had supplied these copies. The respondent contends that both Exts. R-1 and R-2 are greatly at variance with the original petition on material points and they cannot, therefore, be said to be copies of the petition and supplying this type of "Copies" is no compliance with Section 81 (3) of the Act at all. The learned counsel for the respondent has referred to the following discrepancies between the Two :—

1. The word "ensuring" in para 13 of the petition is missing in the copy.
2. The last sentence of paragraph 16 of the petition, which runs as follows, is completely missing in the copy.
"A list of such polling stations where the Presiding Officers were changed is given in Schedule '2' to this petition."
3. The word "this" in last but one line of para 17 of the petition has been typed as "his" in the copy.
4. Para 19 of the petition is completely missing in the copy.
5. In the third line of para 22 of the petition the words "Schedule 1" are typed, but in the copy it has been typed as "schedule 3".
6. The verification clause of Schedule 1 as given in the copy is entirely different from that in the original.
7. In the verification clause in Schedule 3 of the original petition after the words "on information received from agents workers and supporters" the words "of candidate" have been added while these two words do not find place at the corresponding place in the copy.
8. In the affidavit filed with the petition it is stated inter alia that the statements made in "Schedule 3, 4, 7 and 8" of the petition are based on information received from agents workers etc, while in the copy of the affidavit supplied to the respondent the words "Schedule 3 to 5 and 7" have been typed in place of the words "Schedule 3, 4, 7 and 8".

Now, sub-section (3) of Section 81 of the Act provides as follows :—

"Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition."

And the penalty for non-compliance with this provision is laid down in Sub-section (1) of Section 86 of the Act, which says :—

"The High Court shall dismiss an election petition which does not comply with the provisions of Section 81. . . .

"The use of the word shall in both the provisions quoted above is indicative of the fact that Section 81(3) is a mandatory provision and therefore non-compliance with the same must result in the dismissal of the petition. Indeed, after the decisions of the Supreme Court in *Satya Narain Vs. Dhuja Ram* (A.I.R. 1974 S.C. 1185) and *Sarifuddin Vs. Abdul Ghani* (A.I.R. 1980, S.C. 303), there is no room for any controversy on the point. In the former case, the Supreme Court had occasion to consider the first part of Section 81 (3), which requires a petitioner to file as many copies of the petition as there are respondents named in the petition, and the Court observed as follows :—

"We are therefore clearly of the opinion that the first part of Section 81(3) with which we are mainly concerned in this appeal is a peremptory provision and total non-compliance with the same will entail dismissal of the election petition under Sec. 86 of the Act."

In Sarifuddin's case the provisions of Section 89(3) and Sec. 94 (1) of the Jammu & Kashmir Representation of the People Act were considered. These provisions correspond to Section 81 (3) and Sec. 86(1) of the Act respectively and are couched in similar language. Their Lordships observed as follows in paragraphs 9 and 20 of the judgement :—

"9. The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directly or mandatory may be summarised thus :— The fact that the statute uses the word 'shall' while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation, the court has to ascertain the object which the provision of law in question is to subserve its design and the context in which it is enacted. If the object of a law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But when a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one, where however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the Act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by accordance such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequence it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow."

"20. We are, therefore, of the view that the requirement that every copy of the election petition which is intended for service on the respondent should be attested by the petitioner under his own signature is a mandatory requirement and the non-compliance with that requirement should result in the dismissal of the petition as provided in Section 94 of the Act. The High Court was, therefore, right in dismissing the petition on the above ground."

These observations show that the second part of Section 81(3), which requires the petitioner to attest the copies of the peti-

tion to be true copies under his own signature, is also a mandatory provision, and must be strictly complied with, so much so that attestation even by a duly authorised Advocate will not fulfil the requirement of the provision.

Thus the entire sub-section (3) of the Sec. 81 of the Act has been held by the Supreme Court to be a mandatory provision.

If section 81 (3) is a mandatory provision, the petitioner was bound to supply true copies of the petition for service on the respondent, and in case he is held to have failed to do so, the petition has to be dismissed.

It being settled law now that Section 81 (3) is a mandatory provision, and non-compliance with it must prove fatal to the petition, it only remains to consider whether Ex. R-1 and R-2 can be said to be "copies" of the petition within the meaning of Sec. 81(3) of the Act, or the discrepancies between the original petition and Ex. R-1 and R-2 mentioned above deprive them of that character.

The decision of this question depends upon what is the true meaning and connotation of the word "copies" occurring in Section 81(3) of the Act. This question has been dealt with in detail by the Supreme Court in Murarka Radhey Shyam Vs. Roop Singh (A.I.R. 1964, S.C. 1545) in which their Lordships have observed as follows :—

"Having regard to the provisions of part VI of the Act, we are of the view that the word 'Copy' does not mean an absolutely exact copy. It means a copy so true that nobody can by any possibility misunderstand it. The test whether the copy is a true one is whether any variation from the original is calculated to mislead an ordinary person."

The view taken in Murarka's case was reiterated by the Supreme Court in Ch. Subba Rao Vs. Member Election Tribunal Hyderabad (A.I.R. 1964 SC 1027) and it was observed as follows :—

".... the word 'copy' in Section 81(3) meant a copy which was substantially so and which did not contain any material or substantial variation. By 'copy' in Section 81(3) was meant not an exact copy but only one so true that no body by any possibility misunderstanding it not being the same as the original."

These observations show clearly that in order to come within the meaning of the word "copy" a document, if it is not entirely like the original, must at least bear such likeness with the original that any ordinary person reading it will get a correct impression of the contents of the original. As far as I can see, this can be the position only where no material or substantial portion of the original has been omitted, and the divergence between the original and the copy is confined to insignificant clerical, grammatical or typographical error or omission, which do not alter the sense or substance of the contents of the original. So that, if the divergence between the two is such that an ordinary person reading the "copy" will form a wrong or incomplete idea of the contents or substance of the original and is thus misled then it cannot be said to be a copy.

Applying this test, which is deducible, from the aforesaid decisions of the Supreme Court, to Ex. R-1 and Ex. R-2, I am of the opinion that the discrepancies mentioned at Nos. 1, 2, 3 and 7 above are not such as would take away their characters as copies. But in view of the discrepancies mentioned at Nos. 4 and 6 above, Ex. R-1 and R-2 cannot be said to be "copies" of the original petition within the meaning of Section 81(3) of the Act.

The omission of the word "ensuring" in para 13 of the copies and typing "his" in the copies in place of "th's" (item noted at 1 and 3 above) are obviously accidental slips in typing or comparing, which do not in the least alter the sense. No one reading these copies could possibly fail to understand the true nature of the allegations in those paragraphs in the original petition or be in any way misled.

Paragraph 16 of the original petition runs as follows :—

16. That before one day of the election, 85 presiding officers were changed by the Returning Officer at the instance of Sri Chanak Shekhar and such persons were posted in this parliamentary constituency who had sympathies of the Janta Party. A list of the such polling stations where the Presiding Officers were changed is given in Schedule '2' to this petition."

But in Ex. R-1 and Ex. R-2 the last sentence, which has been underlined above, is missing (defect mentioned at No. 2 above). It will however be seen that the rest of the paragraph, which contains the main allegation viz. that the presiding officers of several polling stations were changed at the instance of the respondent, is there in Ex. R-1 and Ex. R-2, that Schedule 2 is headed "List of Polling Stations where Presiding Officers were changed," and that this allegation is not to be found in any other para. In the circumstances no one reading para 16, as it is typed in Ex. R-1 and R-2 (that is minus the last sentence of this para as given in the original) and Schedule 2 could have the slightest difficulty in seeing that the allegation contained in para 16 relates to the polling stations specified in Schedule 2; indeed he could not come to any other conclusion. It cannot, therefore be said that the omission to type the last sentence of para 16 of the petition in Ex. R-1 and R-2 could be in the smallest degree mislead any reader with regard to the allegation contained in paragraph 16 of the petition.

As for item No. 7, it is true that the words "of candidate" which have been added in handwriting after the words "agents, workers and supporters" in the verification clause at the foot of Schedule 3 in the original petition, are not to be found in Ex. R-1 and R-2. But this cannot be considered to be a material omission. No one reading the verification clause as it is typed at the foot of Schedule 3 in Ex. R-1 and R-2 can fail to see that it means that the information was received by the petitioner from his own agents, workers and supporters. The omission of the aforesaid words, which were evidently added in the original in handwriting later as a matter of abundant caution for making it absolutely clear, could not possibly mislead any one as to the real meaning or content of this verification clause.

Coming to the defect mentioned at No. 8 above it is correct that in the affidavit accompanying the original petition it is mentioned, inter alia, that the statements made in Schedules "3, 4, 7 and 8" of the petition are based on information received from agents, workers etc., while the copy of the affidavit in Ex. R-1 and R-2 "3 to 5 and 7" has been typed in place of "3, 4, 7 and 8". This too appears to be a typing mistake. Apart from that, this discrepancy is not in the copy of the petition, but in the copy of the affidavit which is required by the proviso to Section 83(1) of the Act to accompany the petition. So it cannot be said, by reason of this discrepancy, that Ex. R-1 and R-2 are not copies of the petition. Consequently this defect cannot invite the penalty laid down in Section 86(1) of the Act.

But the discrepancies mentioned at Nos. 4 and 6 above are, in my opinion important and material, and therefore must prove fatal.

In para 18 of the petition it is alleged that the workers, supporters and agents of the respondent, with his and his election agents consent, committed the corrupt practice of capturing booths. This is followed by para 19. Paragraph 19 of the original petition runs as follows :—

19. That a large number of complaints of booth capturing and interfering in free exercise of voters right were made to the polling officers but they could not do anything in this regard."

This paragraph is totally missing in Ex. R-1 and R-2. No person reading Ex. R-1 and R-2 could have the faintest idea that the petitioner had made such an allegation in the original petition. If the petitioner had in fact made such complaints while the polling was in progress to polling officers present on the spot, who could at once check its truth or otherwise, it would be, *prima facie* a strong circumstance in favour

of the petitioner's case. Obviously therefore, this allegation was a matter of considerable importance in the case. Thus Ex. R-1 and R-2 clearly differ from the original petition, to use the words of Ayyangar—J in Ch. Subba Rao's case (Supra), in material particulars. If the respondent could not know on reading the copy served on him, that such an allegation had been made in the petition he could not possibly answer it in the written statement. Indeed he has not done so, and only said in the written statement that in the copy served on him para 19 is missing. So clearly the omission in question has prevented him from filing a complete reply to the allegations in the petition. In the circumstances I am of the opinion that it must be held that Ex. R-1 and R-2 are not copies of the petition within the meaning of the Act.

Similarly the discrepancy mentioned at No. 6 above appears to be in respect of an important and material particular. Schedule 1 of the original petition contains the verification clause at the foot thereof. It runs as under :

'I, Mahant Yadav verify that the contents of this Schedule are true to my personal knowledge and belief. Verified at Allahabad this 34th day of Feb. 1980.'

But the verification clause typed at the foot of Schedule 1 in Ex. R-1 and R-2 reads as follows —

'I, Mahant Yadav, the petitioner make oath and verify that the contents of this Schedule are based on information received from agents, workers and supporters which I believe to be true, and that I have signed below this 23rd day of February, 1980 at Allahabad.'

There is no resemblance at all between the two verifications quoted above neither in the language nor in content. This difference in the language is clear enough and, to be sure, verification on the basis of information received from others is not the same thing as verification on the basis of "my knowledge and belief". By no amount of stretching or straining the language can one at the passage quoted later ("copy") of the passage quoted before it.

Considering that Section 82(2) of the Act specifically requires the Schedules, which are part of the petition, to be verified in the same manner as the petition, it cannot be said that the divergence is not on material particular. It has therefore, to be held that on account of this divergence between the petition and Ex. R-1 and R-2 also, Ex. R-1 and R-2 are not 'copies' of the petition within the meaning of Sec. 81(3) of the Act.

If Ex. R-1 and R-2 are not copies of the petition within the meaning of Section 81(3) of the Act, then in view of Section 86(1) of the Act there is only one course open to the Tribunal namely to dismiss the petition.

The learned counsel for the petitioner could not possibly deny these two obvious and major divergences between the original petition and Ex. R-1 and R-2. He however, urged that these variations between the original and the copies could not prejudice the respondent in his defence and therefore the petition could not be dismissed on this ground. He pointed out that the plea of booth capturing was already there in para 18 and what was stated in para 19 was essentially a matter of evidence, and therefore it was not necessary to plead it and evidence to this effect could be led at the trial without pleading it. As for the other, defect the learned counsel pointed out that there was no difference in the contents of Schedule itself given in the petition and in Exs. R-1 and R-2 and argued that in the circumstances the respondent was fully aware of the plea taken on and he could meet it in his evidence. Thus according to him the difference in the verification clauses in the original petition and Exs. R-1 and R-2 also could not cause any prejudice to the respondent at the trial. He sought to place reliance on an unreported decision of a learned single Judge of this Court in Election Petition No. 19 of 1980 Hari Narain Vs. Vinod Kumar decided on 17-12-1980. He also contended that dismissal of the petition on this ground would cause

great and uncalculated hardship to the petitioner. I am unable to accept this contention.

It has been mentioned earlier that it is now settled by the decisions of the Supreme Court that Sec. 81(3) of the Act is a mandatory provision and non-compliance with it must in view of Section 86(1) of the Act entail dismissal of the petition. The language of Section 86(1) is peremptory and without any qualification or exception. Therefore, it appears to me that where non-compliance with the provisions of Section 81(3) is established equitable considerations, such as whether the non-compliance has caused any prejudice to the respondent in his defence or any hardship to the petitioner or not are wholly irrelevant and immaterial. Indeed if such considerations as hardship to the petitioner and prejudice to the respondent were to be taken into account, the Supreme Court could not have held the defect in attestation in Sarifuddin's case to be fatal. How could the mere fact that the attestation was done by the petitioner's counsel and not by the petitioner himself cause any prejudice to the respondent? To accept this contention of the learned counsel for the petitioner would be to say that Section 81(3) and 86(1) are not mandatory or to read qualifications and exceptions into Section 86(1) which are not there.

As far as the judgment in Hari Narain's case is nowhere stated therein that even where non-compliance with Section 81(3) is established, the petition cannot be dismissed without proof of prejudice to the respondent. My attention was drawn to that portion of the judgment of the learned single Judge where as passage from Jagdish Kishore's Rajendra Kumar (AIR 1971 S.C. 342) was quoted and the following sentence was underlined —

'This divergence was bound to mislead the contesting respondents and prejudice their defence.'

I am of the opinion that the words 'prejudice their defence' in this sentence only mean that the divergence is such that it misleads the contesting respondents with regard to the contents of the original petition on a material point to this extent that they cannot file a proper and complete defence (that is written statement). It is obvious that if the divergence in the copy served on the respondent is in respect of 'material particulars' it must result in an incomplete reply in the written statement. That is clearly the case here. Indeed a perusal of paragraph 19 of the written statement of the respondent will show that he did not say anything about this allegation and expressly pleaded that the copy supplied to him does not contain para 19 of the petition. In other words the observation of the Supreme Court which has been quoted by the learned single Judge in his judgment, does not involve any departure from the law laid down in the cases already referred to.

These words cannot be taken to mean actual prejudice at the trial. The contesting respondent is bound to come to know at some stage in the course of the trial of all the discrepancies between the original and the copy and he can then take the necessary steps. So in actual practice no discernible, or however material or important point it may be is likely by itself to cause prejudice to the contesting respondent at the trial. To give such a meaning to the words "prejudice their defence" would be render the provision in this regard in Section 81(3) altogether redundant. In this connection it is to be noted that the effect of non-compliance with Section 81(3) has been considered at length by the Supreme Court in the cases of Satya Narain and Sarifuddin and it has been clearly laid down in both cases that Section 81(3) and Section 86(1) are mandatory provisions and non-compliance with Section 81(3) must entail dismissal of the petition. In neither of these cases has proof of such prejudice been considered to be necessary dismissal. To make occasioning of actual prejudice at the trial to the respondent a condition precedent for dismissal of the petition as urged by the learned counsel for the petitioner would be not only to read qualifications in

Sections 81 (3) and 86 (1) which are not there, but also amount to taking an isolated phrase in this single sentence out of context and to treat it as of greater authority than the considered pronouncements of the Supreme Court in the cases of Satya Narain and Sarifuddin (supra).

Finally, the learned counsel for the petitioner pointed out that in Harnarain Vs. Vinod Kumar, the learned Judge had ignored more material variations between the petition and the copy supplied to the respondent. I do not consider it right or proper to go into that question. Only the propositions of law laid down in a case are to be treated as precedents. How these principles or propositions of law have been applied in a particular case depends on the facts of the case, and one case can hardly be an authority for another.

For the foregoing reasons my finding on this issue is that the provisions of Section 81 (3) have not been complied with by the petitioner and the petition is, therefore, liable to be dismissed. Issue No. 3 is decided accordingly.

ORDER

The petition is dismissed. As the petition has failed on a technical ground at a very early stage the parties are directed to bear their costs.

Dated 15-4-1983.

Sd/- P. N. HARKAULI

